

MAR 29 2016

**DISCIPLINARY ORDER AND SETTLEMENT AGREEMENT**

STATE BOARD OFFICE

The State Board of Embalmers and Funeral Directors, the Petitioner in AHC Case No. 14-1911EM (the "Board"), and Charles R. Penrod, the Respondent in AHC Case No. 14-1911EM (the "Licensee" or "Penrod"), enter into this Disciplinary Order and Settlement Agreement (the "Settlement Agreement") to resolve the question of whether Penrod's embalmer license and/or funeral director license should be subject to discipline and, if so, to agree on the appropriate level of discipline to impose on these licenses.

1. Pursuant to the terms of RSMo. §536.060,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission ("AHC") and the right to a disciplinary hearing before the Board per §621.110 and stipulate and agree to final disposition of this matter by this Settlement Agreement. Following execution of this Settlement Agreement, the Board shall move to dismiss AHC Case No. 14-1911EM within five business days after the Settlement Agreement takes effect.

2. Licensee represents and acknowledges that he understands the various rights and privileges afforded to him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial AHC commissioner concerning the charges pending against him; and, subsequently, the right to a hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against his licenses. Being aware of these rights afforded to him by operation of law,

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<sup>1</sup> All statutory references are to the current Revised Statutes of Missouri, unless otherwise indicated.

Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to him.

3. Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there is cause for discipline, along with citations to law and/or regulations the Board believes were violated and that he has been advised of his right to consult with private legal counsel, at his expense, to assist him with this matter. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's licenses are subject to disciplinary action by the Board in accordance with the provisions of RSMo. Chapters 324, 333, and 621.

4. Licensee acknowledges that the statutory provisions set forth below are applicable to this Settlement Agreement, and Licensee represents that he is familiar with these provisions and has obtained copies of the same, if so desired.

5. It is expressly agreed to and understood that this Settlement Agreement does not resolve any actions by Licensee and/or issues which are not specifically addressed in the Board's Complaint filed in AHC Case No. 14-1911EM, and does not resolve any proceedings other than AHC Case No. 14-1911EM.

6. The parties to this Settlement Agreement agree and stipulate to the following findings of fact and conclusions of law:

A. The Board is an agency of the State of Missouri created and established pursuant to RSMo. §333.151 and is vested with the authority to execute and enforce the provisions of RSMo. Chapter 333 and portions of Chapter 436.

B. RSMo. §333.330.2 authorizes the Board to file a complaint with the AHC, stating in part as follows:

The board may cause a complaint to be filed . . . for any one or any combination of the following causes:

(4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

\* \* \*

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating preneed who is not licensed or registered and currently eligible to practice thereunder;

\* \* \*

(14) Violation of any professional trust or confidence;

\* \* \*

(16) Use of any advertisement or solicitation which is false, misleading, or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed . . .

C. Penrod is an individual licensed by the Board as an embalmer, license no. 005881, and as a funeral director, license no. 004125, with a registered address with the Board of 203 Lombardy Dr., East Prairie, Missouri, 63845.

D. Penrod's embalmer and funeral director licenses were current and active at all times relevant, except Penrod was not licensed between June 1, 2010, and July 23, 2010, due to failure to timely renew his licenses.

E. Penrod does not hold a Missouri preneed provider license, does not hold a Missouri preneed seller license, is not registered with the Board as a preneed agent, and does not hold a funeral establishment license.

F. Penrod was the President of Shelby Funeral Homes, Inc. (the “Establishment”), a Missouri corporation, which was, at all times relevant, active and in good standing with the Missouri Secretary of State’s Office, operating at 104 West Olive Street, East Prairie, Missouri, 63845.

G. The Establishment was at all times relevant to the Complaint filed by the Board in AHC Case No. 14-1911EM under the general management, direction, and supervision of Penrod.

H. The Establishment does not hold a license from the Board as a funeral establishment, a preneed provider, nor a preneed seller.

I. The Establishment previously held a Missouri funeral establishment license, no. 001576, but this license expired on December 31, 2009.

J. RSMo. §333.061.1 provides that “(n)o funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.”

K. RSMo. §333.071 provides, in part, that the “business or profession of an individual licensed to practice embalming or funeral directing shall be conducted and engaged in at a funeral establishment.”

L. The Establishment was previously registered as a Missouri preneed seller, before the law required a preneed seller license.

M. Since August 28, 2009, RSMo. §333.320 has required a preneed seller license from the Board in order to “sell, perform, or agree to perform the seller’s obligations under, or be designated as the seller of, any preneed contract.”

N. The Establishment was previously registered as a Missouri preneed provider, before the law required a preneed provider license.

O. Since August 28, 2009, RSMo. §333.315 has required a preneed provider license from the Board in order to “be designated as a provider or agree to perform the obligations of a provider under a preneed contract.”

P. RSMo. §436.465 requires a seller to maintain adequate books and records and states:

A seller shall maintain:

(1) Adequate records of all preneed contracts and related agreements with providers, trustees of a preneed trust, and financial institutions holding a joint account established under sections 436.400 to 436.520;

(2) Records of preneed contracts, including financial institution statements and death certificates, shall be maintained by the seller for the duration of the contract and for no less than five years after the performance or cancellation of the contract.

Q. Since August 28, 2009, RSMo. §333.325.4 has required that, in order to serve as a preneed agent, a funeral director must request to be included on the Board’s preneed agent registry and to submit to the Board the name and address of each licensed seller for whom they would sell.

R. At no time since August 28, 2009, has Penrod been on the Board’s preneed agent registry, because Penrod has not complied with the requirements of RSMo. §333.325.4.

S. The Board conducted an inspection of the business of Penrod and the Establishment, as authorized by RSMo. §436.470.

T. The Board's inspection revealed the following additional violations: (a) eye wash kit was not installed in the preparation room, (b) last backflow inspection was not available for review, and (3) adequate records were not maintained.

U. Since the Establishment's Missouri funeral establishment license expired on December 31, 2009, and at all times relevant to the Complaint filed by the Board in AHC Case No. 14-1911EM, Penrod continued to hold out to the public and offered to engage and did engage in acts and practices of an embalmer and/or funeral director at the Establishment, although the Establishment was not a licensed facility.

V. While Penrod's embalmer and funeral director licenses were not active between June 1, 2010, and July 23, 2010, Penrod continued to hold himself out to the public as an embalmer and funeral director and continued to offer to engage and engaged in the acts and practices of an embalmer and funeral director.

W. On July 24, 2014, the Circuit Court for Mississippi County, Missouri, issued a permanent injunction against the Penrod and the Establishment enjoining the same from operating as a preneed provider, preneed seller, and/or funeral establishment until such time as proper licenses were obtained, and also enjoining Penrod from operating as an embalmer or funeral director at any unlicensed establishments (the "Injunction").

X. In violation of RSMo. §333.061 and the Injunction, Penrod continued to hold out to the public and advertise that he operates a licensed funeral establishment when, in fact, there was no valid license.

Y. In violation of RSMo. §333.320 and the Injunction, since August 28, 2009, and at all times relevant to the Complaint filed by the Board in AHC Case No. 14-1911EM, Penrod held out to the public, offered to engage, and did engage in the acts and practices of a preneed seller, but has not held a Missouri preneed seller license at any time.

Z. In violation of RSMo. §333.315 and the Injunction, since August 28, 2009, and at all times relevant to the Complaint filed by the Board in AHC Case No. 14-1911EM, Penrod held out to the public, offered to engage, and did engage in the acts and practices of a preneed provider, but has not held a Missouri preneed provider license at any time.

AA. Since August 28, 2009, and at all times relevant to the Complaint filed by the Board in AHC Case No. 14-1911EM, Penrod held out to the public, offered to serve, and did serve as a preneed agent, but Penrod has never been registered with the Board as a preneed agent.

BB. Penrod has utilized signage, stationary, a public web page, and other advertisements and generally held himself out as a licensed seller and provider and held the Establishment out as a licensed funeral establishment when, in fact, Penrod held no such licenses.

CC. While unlicensed, Penrod continued to file death certificates with the Missouri Division of Vital Statistics.

DD. Penrod accepted compensation for his services as described above.

EE. Penrod's conduct, as set forth above, constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation, and/or dishonesty in the

performance of his functions and duties and/or constitutes a violation of a professional trust and/or confidence.

FF. Cause exists to discipline Penrod's funeral director and embalmer licenses pursuant to RSMo. §333.330.2(4), (5), (6), (11), (14), and/or (16).

7. The parties agree and stipulate that the following paragraphs 8 and 9, including all subparts thereof, shall constitute the disciplinary order entered by the Board in this matter under the authority of RSMo. §333.330 and §621.045.3.

8. Licensee's funeral director license, no. 004125, on the effective date of this Settlement Agreement (see paragraphs 17-18 below regarding the effective date), is hereby **REVOKED**.

9. Licensee's embalmer license, no. 005881, is hereby **SUSPENDED** for a term of **TWO YEARS** from the effective date of this Settlement Agreement and, following this two-year period of suspension, placed on **PROBATION** for an additional term of **FIVE YEARS** (the two-year suspension period and the five-year probationary period are collectively referred to hereinafter as the "Disciplinary Period"). During the Disciplinary Period, Licensee shall be subject to applicable law and the following disciplinary terms and conditions:

A. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change(s) in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with his current and active e-mail address.

B. Licensee shall comply with all applicable provisions of RSMo. Chapters 194, 333, and 436, all Board regulations, and all federal, state, and local laws and regulations related to business operations in the funeral and death care industry, including



all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts.

C. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission.

D. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice, and Licensee shall cooperate with the Board's inquiries and requests. Meetings shall be at the Board's discretion.

E. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions.

F. Licensee shall timely renew all licenses and/or registrations, shall pay timely all fees required for licensure/registration, and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active.

G. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with these terms and conditions.

H. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be submitted more than 14 days before it is due. Each compliance report shall state truthfully whether there has been full compliance with the terms and conditions of this Settlement Agreement for the previous six month period and shall fully explain any non-compliance. These compliance reports shall contain all other information required by this Settlement

Agreement. Compliance reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely submission of any compliance report by Licensee.

I. Licensee shall not serve as the supervisor of any embalmer practicum student or apprentice without the express written consent of the Board. If Licensee seeks to supervise a practicum student or an apprentice, Licensee shall submit a written request to the Board that includes the name and address of the potential student or apprentice and a description of Licensee's ability to properly supervise said student or apprentice. No such practicum or apprenticeship shall commence unless and until the Board has given its consent for Licensee to supervise the student or apprentice. The grant or denial of any such request is at the discretion of the Board.

J. If Licensee is currently employed in the funeral industry, Licensee shall provide a copy of this Settlement Agreement to his employer(s) within five business days of the effective date of this Settlement Agreement. Thereafter, Licensee shall provide a copy of this Settlement Agreement to each employer of Licensee engaged in the funeral industry within five business days of the commencement of said employment.

K. During the five-year probation portion of the Disciplinary Period, to begin following the two-year suspension portion of the Disciplinary Period, Licensee shall be entitled to practice as an embalmer, subject to applicable law and the above terms and conditions.

10. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except

by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

11. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's embalmer license shall be fully restored, if all other requirements of the law have been and are being satisfied; provided, however, that in the event the Board determines that Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, impose additional probation and/or suspend, revoke, or otherwise lawfully discipline Licensee's embalmer license.

12. The Board shall enter no order imposing further discipline on Licensee's licenses without notice and an opportunity for hearing before the Board in accordance with the provisions of RSMo. Chapter 536.

13. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the AHC or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

14. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose further discipline on the license(s) of Licensee. The Board has continuing jurisdiction to hold a hearing to determine if a violation of the terms and conditions of probation occurred.

15. Licensee, together with his heirs, successors, and assigns, and his attorneys, do hereby waive, release, acquit, and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to RSMo. §536.087, or any claim arising under 42 U.S.C. §1983, which may be based upon, arise out of, or relate to any of the matters raised in AHC Case No. 14-1911EM, its settlement, or from the negotiation or execution of this Settlement Agreement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement, in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

16. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

17. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the AHC for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license(s). If Licensee desires the AHC to review this Settlement Agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri, 65102.

18. If Licensee requests review, this Settlement Agreement shall become effective on the date the AHC issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the AHC, the Settlement

Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

19. This Settlement Agreement, which constitutes an order of the Board, shall be maintained as an open and public record of the Board as provided in RSMo. Chapters 333, 610, and 324.

**Licensee:**

Charles R. Penrod  
Charles R. Penrod

Dated: 3-21-2016

**Board:**

Sandy Sebastian  
By: Sandy Sebastian, Executive Director  
State Board of Embalmers and Funeral Directors

Dated: 4.4.2016

EFFECTIVE DATE  
4.19.2016  
STATE BOARD OF EMBALMERS  
AND FUNERAL DIRECTORS